



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Captain Gerald E. Green, USN (Retired) -  
Waiver Request

**File:** B-255639

**Date:** May 9, 1994

### DIGEST

A retired Navy officer was hired by the Department of Energy as a consultant with a limited appointment, and approximately 6 months later became a temporary full-time employee. Although his military retired pay was subject to reduction under the Dual Compensation law after 30 days of employment, reductions were not initiated until a few days before his status changed. Since he did not inform the Navy of his government employment promptly, he is not without fault in accepting the resulting overpayments, and his waiver request under 10 U.S.C. § 2774 is therefore denied.

### DECISION

This is in response to an appeal of a Claims Group settlement denying the request of Captain Gerald E. Green, USN (Retired), for waiver of a debt that arose when he received erroneous payments because the Dual Compensation statute was not applied to his employment. We affirm the settlement.

Captain Green retired from the Navy in 1984, and on January 6, 1992, accepted a limited appointment with the Department of Energy as a temporary consultant. His status became that of a temporary full-time employee in July 1992. Although Captain Green's pay was subject to reduction under the Dual Compensation statute 30 days after his employment began, deductions were not begun until July 1, 1992. For the period between February 5, 1992, and June 30, 1992, Captain Green was therefore overpaid, and is indebted to the government in the amount of \$15,420.18. The Claims Group denied his waiver request, and Captain Green has appealed that action.

The retired pay of a member who holds a "position" in the government is subject to reduction by a formula set forth in 5 U.S.C. § 5532(b). "Position" is defined in section 5531(2) as including a temporary, part-time, or intermittent position in any of the three branches of government. The definition includes employment as a consultant. See Colonel Robert Johnston, USAF (Retired), B-178042, May 19, 1977. A

member receiving retired pay is also subject to a "pay cap" limiting combined retired pay and federal civilian pay to the rate for level V of the Executive Schedule. 5 U.S.C. § 5532(c).

Under 10 U.S.C. § 2774, the Comptroller General may waive all or part of an erroneous payment if collection would be against equity and good conscience and not in the best interest of the United States. Waiver is precluded if there exists any indication of fault on the part of the member.

Captain Green points out that the position he held with the Department of Energy did not entitle him to the usual benefits of life insurance, health benefits, and retirement. Captain Green states that he believed that the position was exempt from the operation of the Dual Compensation law, and that he in fact was so told by employees of the Department of Energy.

In our view, Captain Green is not without fault in this matter. Given the wide availability to retiring Navy officers of briefings and publications regarding the Dual Compensation law, and given his rank and military experience, we think Captain Green should have been aware of the importance of ascertaining for himself his exact status regarding the Dual Compensation law and requested verification in writing. See Captain Ronald L. Bouchard, B-251128, May 4, 1993. Moreover, Captain Green filled out a DD-1357, Statement of Employment, when he retired. The form states "I will file a new Statement of Employment within 30 days after the information in this statement has ceased to be accurate." At the least, he should have fulfilled his obligation to complete the required form when his employment began. Since Captain Green did not inform the Navy of his employment, he is not without fault, and waiver may not be granted. Id.

Accordingly, Captain Green's waiver request is denied, and the Claims Group's settlement is affirmed.

 Robert F. Murphy

Acting General Counsel